

As the M.P.E.P. provides, “[i]f the search and examination of the entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.” M.P.E.P. § 803, emphasis added. There can be no serious burden to search all the claims because all the claims share a common aspect in that they all relate to the antigens recited in claims 45 and 47. Thus, all the claims should be examined to avoid unnecessary delay and duplicative examination.

The Examiner asserts that the claims in Group 1 and Group 2 are directed toward a different product with different functions without providing further explanation to support this alleged ground for restriction of the pending claims. In light of this unsupported statement, Applicants contend that literature searches are generally based on key words. Accordingly, literature searches for a given antigen and kits comprising that antigen are coextensive. For example, when examining the claims of Group 2, the Examiner would likely perform a search on the antigens recited in claims 50-53. In effect, the Examiner would be searching the antigens of independent claims 45 and 47 in Group 1 anyway. Thus, Groups 1 and 2 are searchable together without serious burden because they reflect various embodiments of the antigens recited in independent claims 45 and 47. This relationship between the claims allows the Examiner to search them without undue burden.

For the reasons provided above, Applicants therefore request that the Office rescind its restriction requirement and examine pending claims 45-53. Should the Examiner make this restriction final, Applicants request that upon determination that the

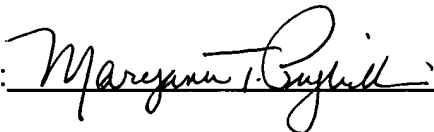
claims of Group 1 are patentable, the claims of Group 2 be rejoined. If the antigen of claims 45-49 are found to be patentable, then so too are kits comprising these antigens.

Please grant any extensions of time required to enter this paper and charge necessary fees for such an extension to Deposit Account No. 06-0916.

Respectfully submitted,

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